

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Douglas Barry et al.

Serial No: 10/626,463

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For: CONVEYOR TRACK DRIVE

Group Art Unit: 3651

Examiner: DILLON JR., JOSEPH A.

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(37 CFR 1.8(a))**

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David L. Weinstein

**RESPONSE TO OFFICE COMMUNICATION**

Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In response to the Office Communication mailed August 10, 2007,  
Applicants are addressing the central issue of the new matter question.

According to the Examiner:

The guide plate 48 was not originally depicted in the Figure(s).  
[Office Action 01/04/2007, page 3]

The slots 50 and 52 are indicated only at the far bottom of  
Figure(s) 5 at their straight portions. No attention is drawn to the  
transversely angled portions of the slots as being the member(s) that  
passively shifts the object(s) as the conveyor travels. [Office Action  
01/04/2007, page 3]

This insertion, identifying sidewalls 50A and 50B of the slots is

the exact part of the disclosure that was missing. [Office Action 01/04/2007, page 3]

According to the specification:

A carrier guide plate 48 is mounted on the upper end of housing 24 to guide specimen carriers 20 as they travel from the upstream end 24a to the downstream end 24b of the housing 24 on the drive plane P. As shown in Figure 5, guide plate 48 has two slots 50 and 52 formed therethrough, parallel to one another and extending from end to end. [page 8, lines 4-8 of the specification]

The foregoing passage states that the slot 50 is formed through the carrier guide plate 48. While the reference numeral 48 for the carrier guide plate was not originally depicted in the drawings as filed, the reference numeral 48 for the carrier guide plate was set forth on page 8, lines 4 of the specification. The carrier guide plate, which can be located by observing the two slots 50 and 52 formed therethrough, is indeed present in FIGS. 4 and 5, as originally filed. Moreover, 35 U. S. C. §113 implicitly assumes that even when the United States Patent and Trademark Office finds a defect in failing to provide a drawing, the applicant can cure the defect by submitting drawings, provided only that post-filing date drawings cannot overcome an enabling or other disclosure deficiency. See 35 U. S. C. §113, third sentence. In the present situation, drawings were submitted at the time of filing, and the only defect, with respect to the carrier guide plate, was that the reference numeral 48 was omitted from FIGS. 4 and 5. Therefore, Applicants have the right to insert the reference numeral 48, which was set forth in the specification, on drawings that were properly submitted at the time of filing of the application. For this reason, the rejection based on the failure to include the carrier guide plate 48 in the drawing(s) should be withdrawn.

Because FIG. 5 is a top plan view, it is impossible to discern the depths of the sidewalls 50A and 50B in FIG. 5, as originally submitted. This same shortcoming is also apparent in FIG. 6, as originally submitted. FIG. 4, however, is an end elevational view of the drive mechanism, showing the

upstream end of the device. According to the specification, item 20 is a specimen carrier [page 6, line 14 of the specification], item 26 is a table top chain [page 6, line 18 of the specification], item 26a is the first segment of chain 26 [page 7, line 21 of the specification], item 26b is the second segment of chain 26 [page 8, lines 11 and 20 of the specification], item 48 is a carrier guide plate [page 8, line 4 of the specification], and item 50 is a slot formed in the guide plate [page 8, line 7 of the specification]. Upon viewing FIG. 4, as originally filed, it can be seen that the carrier guide plate, which is not identified by the reference numeral 48 but is highlighted in red ink (see Exhibit I-ROC), forms a boundary circumscribing the slot 50. While items 50A and 50B constitute the sidewalls of the slot 50, in reality, the sidewalls of the slot 50 are formed by the edges of the carrier guide plate 48. The edges of the carrier guide plate 48 were disclosed in the original drawing of FIG. 4. Moreover, because the carrier guide plate 48 is made of a three-dimensional material, a slot formed through the major surfaces of the carrier guide plate 48 will have edges circumscribing the slot formed therethrough. Accordingly, the sidewalls 50A and 50B are formed by the edges of the carrier guide plate 48, are disclosed in original FIG. 4, and, consequently, the sidewalls 50A and 50B do not constitute new matter. In view of the foregoing reasons, the sidewalls 50A and 50B of the slot 50 are disclosed in the drawings, i.e., FIG. 4, as originally filed, and consequently, the sidewalls 50A and 50B are not new matter. Accordingly, the rejection based on new matter should be withdrawn.

Accordingly, it is submitted that claims 1-9, as amended, are in condition for allowance, and official Notice of Allowance is respectfully requested.

**23492**

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Respectfully submitted,  
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A handwritten signature in cursive script, reading "David L. Weinstein".

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